

**CCA Case No. 19007 – Lance Gaines  
Investigation Report and Finding**

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**Jessalyn Goodman  
Investigator**

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## COMPLAINT SUMMARY

Date: January 13, 2019

Time: 11:04 p.m.

Location: 1000 Sycamore Avenue

CCA Receipt: January 14, 2019

Complainant: Lance Gaines

Per CPD: After Sergeant Zachary Sterbling arrested Mr. Lance Gaines and transported him to Hamilton County Justice Center (HCJC), Mr. Gaines claimed, "You punched me in my face."

## INVOLVED SUBJECT STATEMENTS

### **Lance Gaines**

Mr. Gaines, M/B/28, was unable to be interviewed. CCA attempted to contact him by mail, at his listed residence, and during his incarceration at HCJC without success. To date, Mr. Gaines has not contacted CCA.

## INVOLVED OFFICER STATEMENTS

### **Sergeant Zachary Sterbling**

Sergeant Sterbling, #S0159, M/W/37, is currently assigned to Internal Investigations Section (IIS). On the date of the incident, Sergeant Sterbling was assigned to District 3 as a police officer with badge #P0934. He has been a CPD member since 2007. Sergeant Sterbling was on duty was on duty, in uniform, and operated a marked cruiser, partnered with Officer Utecht; his BWC was activated.

On January 13, 2019, Officers Sterbling and Utecht responded to a radio run concerning a domestic violence warrant on Mr. Gaines. His wife had called ECC to report Mr. Gaines's behavior after he texted her threatening messages while waiting at her residence for her to come home. Sergeant Sterbling and Officer Utecht confirmed the warrant and then arrived to arrest Mr. Gaines. Upon their arrival at the scene, Mr. Gaines fled behind a nearby house. Sgt. Sterbling could not recall if any verbal commands were given. Sergeant Sterbling and Officer Utecht pursued Mr. Gaines on foot until they found him seated on a step behind a house. They gave him verbal commands to get on the ground. Sergeant Sterbling did not recall how Mr. Gaines was placed on the ground; he stated that the officers had to "pull on him...to maneuver him" to place Mr. Gaines in handcuffs but denied that any force was used. He did not know if anyone utilized a TASER. Sergeant Sterbling did not recall who handcuffed Mr. Gaines. Sergeant Sterbling recalled Mr. Gaines was searched but did not recall who conducted the search or if anything was located.

After his arrest, Sergeant Sterbling and Officer Utecht transported Mr. Gaines to HCJC. During the transportation, Sergeant Sterbling described Mr. Gaines as “threatening,” and stated he made threats of forced sexual acts against Sergeant Sterbling’s and Officer Utecht’s wives. Mr. Gaines made similar comments for the duration of the transport to HCJC. Sergeant Sterbling did not recall either his or Officer Utecht’s responses to Mr. Gaines’s statements.

They arrived at HCJC and removed Mr. Gaines from the cruiser, who was still threatening and uncooperative. Sergeant Sterbling and Officer Utecht escorted Mr. Gaines inside, with one officer on each side. Mr. Gaines spat on the side of Sergeant Sterbling’s head before Sergeant Sterbling immediately delivered two closed-fist punches to Mr. Gaines’s head to prevent him from spitting any further. Officer Utecht took Mr. Gaines to the ground, although both officers sort of went down together.” Sergeant Sterbling and Officer Utecht held him to the ground until HCJC personnel came to assist. Mr. Gaines was not injured nor was Sergeant Sterbling in the altercation. Sergeant Filmore was notified of the incident.

Sergeant Sterbling confirmed he had MHRT training but stated he was not aware of Mr. Gaines having a mental health illness at the time of the incident. He denied having any previous contact with Mr. Gaines.

### **Officer Douglas Utecht**

Officer Douglas Utecht, #P0939, M/W/36, is assigned to District 3 and has been a CPD member since 2007. Officer Utecht was on duty, in uniform, and operated a marked cruiser, partnered with Sergeant Sterbling; his BWC was activated.

Officer Utecht and Sergeant Sterbling responded to a radio run regarding Mr. Gaines, who was a suspect of a felony domestic violence warrant. When the officers arrived on scene, they observed Mr. Gaines descending the steps in front of a house. They yelled for Mr. Gaines to stop, but he ran approximately three or four houses away from them. Officer Utecht and Sergeant Sterbling radioed they were in pursuit of Mr. Gaines. The officers located Mr. Gaines, who sat on a step behind a house. Officer Utecht held him at TASER point to apprehend him because Mr. Gaines was a Felony 1 suspect and uncooperative; he believed he gave a TASER warning. Officer Utecht described Mr. Gaines as not “necessarily compliant” and was not “following instructions to put his hands behind his back. Officer Utecht and Sergeant Sterbling “physically grabbed” Mr. Gaines with their hands and placed him face down on the ground. The officers did not put a knee on his neck; the officers put his arms behind his back because he was under arrest for the warrant, obstruction, and possibly resisting arrest. Mr. Gaines did not sustain any injuries from the incident.

Sergeant Sterbling and Officer Utecht handcuffed Mr. Gaines. Officer Utecht searched Mr. Gaines; he did not recall if he located anything on him. He did not know if Sergeant Sterbling also searched Mr. Gaines. Mr. Gaines was placed in the cruiser. As they transported Mr. Gaines, Mr. Gaines threatened to assault the officers and sexually assault their wives. Officer Utecht stated that he and Sergeant Sterbling “probably” responded to Mr. Gaines’s statements, and “there was stuff said both ways” but did not recall specifics. Officer Utecht stated he did not make any discourteous statements to Mr. Gaines; he stated he did not know what Sergeant Sterbling said to Mr. Gaines.

After their arrival the HCJC, Sergeant Sterbling got Mr. Gaines out of the cruiser. As Officer Utecht and Sergeant Sterbling walked Mr. Gaines towards the HCJC, Mr. Gaines spat in Sergeant Sterbling’s face. In response, Officer Utecht grabbed Mr. Gaines and “threw him to the ground” by putting one arm around the front of his chest, spun him around to the side, and took him down to the ground.” Officer Utecht did believe there was any other option besides taking Mr. Gaines to the ground, due to health concerns and it being a felony offense; he clarified the officers do not have the ability to step back away from somebody under arrest. He did not observe Sergeant

Sterbling strike Mr. Gaines; Sergeant Sterbling told Officer Utecht he threw some strikes towards Mr. Gaines. Mr. Gaines was not injured. Sergeant Filmore was notified of the altercation. Mr. Gaines was additionally charged with spitting on Sergeant Sterbling.

Officer Utecht confirmed he had MHRT training. He stated that during the officers' initial contact with Mr. Gaines's wife, he asked if Mr. Gaines had a mental health illness but did not recall her response. Officer Utecht stated he knew Mr. Gaines "by face" and knew him from previous reports of assaults to the same woman.

#### OFFICER WITNESS STATEMENTS

There were none.

#### WITNESS STATEMENTS

There were none.

#### EVIDENCE

### **Police Documents**

CCA reviewed all CPD-related forms, including but not limited to the Computer Aided Dispatch (CAD) report for January 13, 2019, the Arrest and Investigation Report, the Supervisor's Use of Force Investigation Report, and the IIS report.

### **Computer Aided Dispatch (CAD)**

<b><u>Date</u></b>	<b><u>Time</u></b>	<b><u>Call Notes</u></b>
01/13/2019	19:04:09	Complainant, Marshay Gaines, contacted ECC.
	19:05:41	Mrs. Gaines reported that her husband [Lance Gaines] was on-scene. She stated she has a DomVio warrant against him; he has been texting her very threatening messages.
	19:06:20	She added that Mr. Gaines is inside the home and calling from the home phone and her son's phone.
	19:07:05	Officer Utecht and Sergeant Sterbling were assigned to repond.
	19:07:33	Mrs. Gaines stated she was on her way home from work and was unsure of Mr. Gaines's state of mind; he has a history of violence towards Mrs. Gaines and can be very violent. She indicated he is not known to carry weapons and possibly has an unknown mental diagnosis.
	19:24:15	Mr. Gaines headed east-bound towards BLVD.
	19:26:58	Mr. Gaines was in custody.
	19:27:44	FW for DV.
	19:36:53	Secondary location for Officer Utecht and Sergeant Sterbling: Jail.
	21:06:14	Disposition: Arrest

## **Hamilton County Justice Center Security Video**

*Date: 01/13/2019*

*Time Captured: 20:00:01 – 20:01:59*

For the initial 51 seconds, Sergeant Sterbling stood by the open rear door of the cruiser. Sergeant Sterbling then removed Mr. Gaines from the cruiser; Mr. Gaines appeared resistant. Officer Utecht escorted Mr. Gaines on his left side and held onto his elbow while and Sergeant Sterbling escorted Mr. Gaines on his right side and held onto his upper arm. At 20:00:57, Mr. Gaines spat at Sergeant Sterbling. Sergeant Sterbling appeared to strike Mr. Gaines's face once with his right fist once and attempt a second strike immediately afterwards.

Sergeant Sterbling and Officer Utecht immediately took Mr. Gaines to the ground by using their hands along Mr. Gaines's head, neck, and shoulders. At 20:01:01, Officer Utecht lay sprawled against Mr. Gaines; by 20:01:07, Sergeant Sterbling maneuvered to and remained on top of Mr. Gaines's torso while Officer Utecht knelt to the side. Officer Utecht stood and went to the cruiser. At 20:01:20, HCJC personnel responded to assist and placed a spit mask on Mr. Gaines's head. HCJC personnel escorted Mr. Gaines into HCJC.

### **Body Worn Camera (BWC)**

*CCA reviewed the BWC footage for Sergeant Sterbling, Officer Utecht, Officer Mallory, and Officer Merriweather. Officer Mallory's and Merriweather's BWC did not capture footage pertinent to the allegations.*

### **Officer Utecht**

Sergeant Sterbling drove himself and Officer Utecht to the scene. On arrival, they observed Mr. Gaines outside of a house. Sergeant Sterbling shouted at Mr. Gaines that they would recite him but Mr. Gaines ran away. Officer Utecht and Sergeant Sterbling exited their cruiser and walked around for few moments looking for Mr. Gaines before Officer Utecht saw him behind a house. Officer Utecht reached Mr. Gaines, who was sitting on a step, and commanded him to put his hands behind his back several times. Mr. Gaines did not comply. Officer Utecht threatened to use a TASER on Mr. Gaines and instructed Mr. Gaines to put his hands on his head. Officer Utecht raised his voice considerably just before Sergeant Sterbling grabbed Mr. Gaines's arm and threw him face first to the ground. The two officers then handcuffed Mr. Gaines while he was on the ground. Mr. Gaines suggested that they beat him up and that they drug him before he stood up.

Sergeant Sterbling and Officer Utecht escorted him to their cruiser. Officer Utecht held Mr. Gaines against the cruiser and Sergeant Sterbling searched Mr. Gaines. Mr. Gaines's wife, Marshay Gaines, arrived at the scene. Mr. Gaines grew more agitated and threatened to assault the officers. Mrs. Gaines mentioned to the officers that Mr. Gaines needed a psychiatric evaluation. Sergeant Sterbling commented that Mr. Gaines sounded like he was crying and added, "We know you are mentally ill," before he placed Mr. Gaines in the back of the cruiser.

Officer Utecht moved to the other side of the cruiser and mentioned he arrested Mr. Gaines a year ago. As Officers Mallory and Merriweather arrived, he advised they could leave the scene. Officer Utecht spoke to Mrs. Gaines regarding the keys to a nearby rental vehicle that belonged to her, but Mr. Gaines had taken from her. Both Officer Utecht and Mrs. Gaines agreed Mr. Gaines needed mental health assistance, with Officer Utecht further stating that Mr. Gaines has needed it for a long time. A few moments later, Mrs. Gaines again commented that Mr. Gaines needed mental health services. Officer Utecht told Mrs. Gaines that she needed to go to court to get a judge's help to do so. Officer Utecht spoke with the Mrs. Gaines while he responded to Mr.

Gaines's comments from the back of the cruiser. Sergeant Sterbling returned to the cruiser and the two officers left the scene with Mr. Gaines in custody.

During the transport, Mr. Gaines made continuous aggressive and threatening statements to the officers, including comments that he would fight them. Sergeant Sterbling asked Mr. Gaines where the tough talk was previously when they first handcuffed him. Sergeant Sterbling mimicked a noise several times that Mr. Gaines made. The officers exchanged several comments with a clearly irate Mr. Gaines, at times prodding his already enraged state. Sergeant Sterbling commented, "I think he's having a mental breakdown."

Mr. Gaines made threats of physical aggression and sexual assault against the officers' wives. Officer Utecht and Sergeant Sterbling responded to each of Mr. Gaines's comments and included apparent jokes by the officers about having a husband rather than a wife, and whether Mr. Gaines would sexually abuse the husband. Further the officers prodded Mr. Gaines to clarify comments he made about buying them drinks and some confused discussion of Mr. Gaines's penis size. This included Sergeant Sterbling saying, "Are you talking about your penis again," "Wait, I'm confused. Are we talking about your penis or are we talking about a drink," and "Well, you were talking about nine inches and all this stuff and now you're talking about stiff drinks."

When the officers arrived at HCJC, they completed paperwork for several minutes before they exited the cruiser. They had significant difficulty in calming Mr. Gaines and removing him from the cruiser. Eventually, Sergeant Sterbling removed Mr. Gaines from the cruiser and walked on Mr. Gaines's right side as they escorted him towards HCJC. Officer Utecht escorted Mr. Gaines from his left side. Within seconds, Mr. Gaines spat at Sergeant Sterbling. There was significant commotion between the two officers and Mr. Gaines before Mr. Gaines was taken to ground. Both Officers placed hands and knees on Mr. Gaines while he was on the ground to subdue him. Officer Utecht placed a spit sock over Mr. Gaines's head. HCJC personnel approached and assisted with Mr. Gaines. The officers followed HCJC personnel, who escorted Mr. Gaines inside HCJC.

### **Sergeant Sterbling**

Sergeant Sterbling's BWC corroborated Officer Utecht's BWC. It also captured a conversation held after Mr. Gaines was placed in the cruiser initially, when Sergeant Sterbling searched the surrounding area Mr. Gaines had been. Mrs. Gaines asked Sergeant Sterbling about how to get Mr. Gaines assistance about his mental health help, but Sergeant Sterbling replied that he did not know, and she should probably go to court.

The BWC footage mirrored Officer Utecht's BWC until the incident at HCJC. After Mr. Gaines spat on Sergeant Sterbling, Sergeant Sterbling appeared to deliver two strikes to Mr. Gaines. Afterwards, the commotion between Mr. Gaines, Sergeant Sterbling, and Officer Utecht caused Sergeant Sterbling's BWC to topple off onto the ground, facing up. Later, Officer Utecht retrieved Sergeant Sterbling's BWC and returned it to him. HCJC personnel escorted Mr. Gaines inside with Officer Utecht and Sergeant Sterbling.

### **Photographs**

CCA reviewed three photographs of the left side of Mr. Gaines's face. Each photograph shows a red abrasion near Mr. Gaines's left temple.

## SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

1. Sergeant Sterbling was an officer at the time of the incident. He was promoted to Sergeant in February 2019.
2. Sergeant Sterbling delivered two closed-fist strikes to the right side of Mr. Gaines's head; no photographs were taken of the right side of Mr. Gaines head. Per the IIS Report, Sergeant Hall, who responded to the scene and photographed Mr. Gaines, reported he did not observe injuries on that side of the head and did not believe any photographs were necessary; his failure to obtain photographs was addressed by CPD command staff.

## AUTHORITIES

### I. Caselaw

*State v. Bolton*, 2018-Ohio-1551, 111 N.E.3d 545, ¶¶ 556-58 (6th Dist.) (upholding jury verdict convicting police officer of assault for striking suspect with closed fist in response to perceived attempt to spit on officer).

*Brock v. City of Belleville*, 2018 U.S. Dist. LEXIS 85827, at \*8 (S.D. Ill. May 22, 2018) (holding that an officer's strike to the face in response to being spat upon was not objectively unreasonable in case involving a single strike, with an open hand, in situation where officer could not move away from saliva, where strike was done to redirect the suspect's mouth away from the officer).

### II. Manual of Rules and Regulations (in part) (Revised 04/19/18)

#### Section One – Failure of Good Behavior

##### 1.06

- A. Members of the Department shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates.
- B. Members of the Department shall avoid the use of coarse, violent, or profane language.
- C. Members of the Department shall not express any prejudice concerning race, sex, religion, national origin, life-style, or similar personal characteristics.

### III. CPD Procedure Manual (in part)

#### § 12.110 Handling Suspected Mentally Ill Individuals and Potential Suicides (Revised 7/27/17)

##### Policy:

Mental Health Response Team (MHRT) Officers will be the first responders, when available, on all runs involving suspected mentally ill individuals. If two MHRT Officers are available, they will be dispatched as a team. When necessary a cover car will be dispatched. If the run

is an emergency and no MHRT Officer is available, beat cars will be dispatched immediately and an MHRT Officer from another district will be notified to respond. If the run is not an emergency and no MHRT Officer is available, the nearest available MHRT Officer from an adjoining district will be dispatched as the primary car.

An MHRT Officer on the scene of a suspected mentally ill individual will be the primary Officer handling the situation. They will also be responsible for transporting the individual, if necessary, to the hospital.

Officers should attempt to use non-confrontational verbal skills, empathy and/or active listening to stabilize a person in crisis or when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to comply before force is used unless this causes unnecessary danger to the Officer or others. De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.

A supervisor will respond on all radio runs involving violent or potentially violent mentally ill individuals and, when possible, will consult the MHRT Officer on scene to decide on a course of action.

**Document all encounters with suspected mentally ill individuals on a RMS Minor Aided Case 8 Report. This will be in addition to any other reports made.**

Any suspected mentally ill person reported as missing with a mental hold or who voluntarily agrees, when found, will be returned to the facility that reported them missing. If the facility is unknown, the subject is violent, or from outside the Hamilton County boundaries, the suspected mentally ill person will be taken to UC Health Psychiatric Emergency Services (PES) at the Ridgeway Pavilion.

### **Information:**

When Officers arrive on the scene of a suspected mentally ill individual and the situation meets the criteria for activating the Special Weapons and Tactics Unit (SWAT), or the SWAT Negotiations Team, follow the steps as outlined in Procedure 12.175.

Mobile Crisis Team (MCT) is a mental health crisis resource funded by the Hamilton County Mental Health and Recovery Services Board. The Mobile Crisis Team is an aid to Department personnel, providing around-the-clock, on-site psychiatric crisis intervention. Their aim is to help prevent harm to a suspected mentally ill person, or others, during psychiatric emergency situations requiring police response.

The University of Cincinnati Medical Center and PES will not provide a locked environment during triage for mentally ill patients.

### **Procedure:**

1. A police Officer may take an individual into custody and transport that individual to a hospital if:
  - a. The individual is suspected to be mentally ill and likely to injure himself /herself or others if allowed to remain at liberty.

2. ORC Section 5122.10 reads, "A person taking the respondent into custody pursuant to this section, shall explain to the respondent the name, professional designation, and agency affiliation of the person taking the respondent into custody; that the custody taking is not a criminal arrest; and that the person is being taken for examination by mental health professionals at a specified mental health facility identified by name".
3. Whenever there is any use of force or other significant police action with a state mental hold, sign appropriate criminal charges against the individual. This includes any use of force, use of chemical irritant, canine apprehension, or use of the Taser, beanbag shotgun, 40mm foam round, or pepperball launcher.
  - a. When placing criminal charges, place a prisoner hold at the hospital according to Procedure 12.600. Have the Emergency Communications Section (ECS) notify the hospital if the person is an unusual security risk.
  - b. Telephone the Hamilton County Justice Center (HCJC) Intake Office with the necessary information about the individual hospitalized only when placing criminal charges. Call before leaving the hospital.
  - c. Complete a Form 527, Arrest and Investigation Report, and process according to Procedures 12.555 and 12.600.
4. Handcuff suspected mentally ill individuals during the transporting and processing phases when the individual's behavior is unpredictable or past contact indicates there is a potential for violence.
5. Explain the use of handcuffs to the person and the family in a tactful manner.
6. Two Officers will transport the suspected mentally ill individual.
  - a. The Officer with personal knowledge of the individual's behavior or an MHRT Officer will accompany the transporting Officer to the hospital and complete the proper forms.
7. Only two hospitals in this area will admit individuals under these circumstances. Service is available 24 hours a day, 7 days a week.
  - a. Transport adults age 18 and over to UC Health Psychiatric Emergency Services (PES) at the Ridgeway Pavilion, 3200 Burnet Avenue, North Entrance, Level A. Officers can access parking for the new facility via the intersection of Burnet Avenue and Albert Sabin Way.
    - 1) UC Health Security will provide escorts to all transports from the Level A entry area to PES in the rear of Level A, if necessary.
    - 2) When transporting to PES request the dispatcher or district desk personnel to call and advise of an ETA.
  - 3) Individuals with a primary medical emergency who may also be in need of psychiatric services must be transported to the University of Cincinnati Medical Center main campus or the nearest medical facility based on the patient's condition. PES is not equipped to receive such patients.
    - b. Transport children 17 years of age and under to Children's Hospital Medical Center.

- 1) Handcuffed juveniles are to be brought in through the squad entrance for admission.
8. Upon arrival at the hospital:
  - a. Complete the Ohio Department of Mental Health Form for emergency admission. In the "Statement of Belief" section, briefly note:
    - 1) The circumstances under which the individual came into custody.
    - 2) The reasons for your belief that hospitalization is necessary.
    - 3) Any other pertinent information known about the individual.
9. Complete a RMS Minor Aided Case Report.

## **§ 12.545 Use of Force (Revised 07/27/17)**

### **Definitions:**

**Actively Resisting Arrest** – When the subject is making physically evasive movements **to defeat the Officer's attempt at control**, including fleeing, bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

**De-escalation** – Using non-confrontational verbal skills, empathy and active listening to stabilize a person in crisis. De-escalation may also incorporate the use of additional time, distance, and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.

**Force** – Any physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of: firearms, TASERs, chemical irritant, choke holds or hard hands, the taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with no or minimal resistance.

**Self-Defense** – The act of protecting oneself or another from physical harm or serious physical harm.

### **Policy:**

The Cincinnati Police Department recognizes the value of all human life and is committed to respecting the Constitutional rights and dignity of every individual. Officers shall act within the boundaries of the United States Constitution, the laws and constitution of the state of Ohio, the charter and ordinances of the city of Cincinnati, this use of force procedure, and all other relevant CPD procedures, policies, practices and training.

A police Officer's right to make an arrest or an investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it. Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the Officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. ... (T)he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable Officer on the scene, rather than

with the 20/20 vision of hindsight ...the question is whether the Officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them" (Graham v. Connor, 1989).

A number of factors may be taken into consideration to evaluate whether an Officer has used objectively reasonable force. These factors include, but are not limited to:

- The conduct of the person being confronted as reasonably perceived by the Officer at the time, including the level of threat or resistance presented by the subject.
- The Officer's and subject's factors, including but not limited to: size, age, relative strength, skill level, injuries sustained, level of exhaustion or fatigue and the number of Officers versus subjects.
- The influence of drugs or alcohol and the subject's mental capacity, if known.
- The proximity of weapons.
- The distance between the Officer and subject.
- The degree to which the subject has been effectively restrained and his / her ability to resist despite being restrained.
- Time and circumstances permitting, the availability of other options (resources that are reasonably available to the Officer under the circumstances).
- The seriousness of the suspected offense or reason for the contact with the individual.
- The training and experience of the Officer.
- The potential for injury to citizens, Officers and suspects.
- Whether the conduct of the individual being confronted reasonably appears to pose an imminent threat to the Officers or others.
- The prior knowledge of the subject's propensity for violence.
- Any other exigent circumstance or special knowledge.

Courtesy in all public contacts encourages understanding and cooperation. The most desirable method for effecting an arrest is where a suspect complies with clear and concise directions given by an Officer.

Whenever possible, de-escalation techniques shall be employed to gain voluntary compliance by a subject. Officers shall use only the level of force that is objectively reasonable to effect an arrest or while protecting the safety of the Officer and others.

Officers should attempt to achieve control through advice, delay, warnings, and/or persuasion when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to submit to arrest before force is used, unless this causes unnecessary danger to the Officer or others.

When Officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. Just as Officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others, but extends to that amount reasonably necessary to enable them to effect the arrest of an **actively resistant** subject.

An Officer has a duty to stop, prevent and report the use of excessive force by another Officer. Officers who use excessive force will be subject to discipline, possible criminal prosecution, and/or civil liability.

### Information:

Use of Force Continuum: Force situations often do not allow for an ordinal progression up a continuum of force and Officers must be ready to escalate or deescalate as the situation evolves.

#### Examples of Subject Resistance

- Uncooperative: Subject fails to respond to verbal commands or other directions.
- Active resistance: Subject is making physically evasive movements to defeat the Officer's attempt at control, including bracing, tensing, pushing, fleeing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.
- Assault or threat of assault: Subject assumes fighting stance, charges, strikes, or kicks an Officer or verbally or physically indicates an intention to commit an assault combined with the subject's capability to assault.
- Life threatening assault or assault likely to cause serious physical harm: Subject commits an attack using an object, a weapon, or an empty hand assault, wherein the Officer reasonably believes the assault will result in serious physical harm and/or death.

The aforementioned policy was effective from 7/27/17 to 01/24/19. The updated policy as of 01/28/21 is outlined below, with the relevant portion excerpted and underlined for emphasis:

When Officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. Just as Officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others, but extends to that amount reasonably necessary to enable them to effect the arrest of an **actively resistant** subject. Although a criminal offense, a subject who spits on an Officer without engaging in any other actions/resistance is not a violent attack. Officers are prohibited from using physical strikes to protect themselves from a subject who is solely spitting on them.

An Officer has a duty to stop, prevent and report the use of excessive force by another Officer. Officers who use excessive force will be subject to discipline, possible criminal prosecution, and/or civil liability.

## ANALYSIS

### Allegation: Excessive Force

CPD Procedure §12.545 *Use of Force* details that CPD officers' use of force "is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to effect the arrest of an actively resistant subject." It further defines active resistance as an attempt to break free of an officer's control of the subject. The test used to determine whether force used against a resistant subject is excessive is "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them."

Procedure §12.545 (citing *Graham v. Connor*). CPD Manual of Rules and Regulations § 1.22 also states “members shall not verbally and/or physically mistreat persons who are in custody.”

In this case, HCJC security footage and Sergeant Sterbling confirmed that Mr. Gaines spat at Sergeant Sterbling, and that in response, Sergeant Sterbling delivered one closed-fist strike to Mr. Gaines’s face. A second attempt at striking Mr. Gaines made glancing contact before Sergeant Sterbling and Officer Utecht forced Mr. Gaines to the ground. Sergeant Sterbling stated that he delivered the strikes to Mr. Gaines to prevent him from spitting any further. The test, however, is not whether the officer who used force had a subjective belief that the force was necessary. As we have explained above, the test is whether the actions were objectively reasonable. The evidence establishes that the response to strike Mr. Gaines was not objectively reasonable since the conduct involved a closed fist (rather than an open hand), involved more than one strike, Mr. Gaines was handcuffed at the time, and there were other, less violent means available to prevent and control Mr. Gaines’s behavior, such as the officers’ subsequent use of physical force to take Mr. Gaines to the ground. As a result, Sergeant Sterbling violated CPD policies, procedures and training when he struck Mr. Gaines’s face with a closed fist.

### *Collateral Allegations*

#### **Allegation: Improper Procedure**

CPD Procedure § 12.110 *Handling Suspected Mentally Ill Individuals and Potential Suicides* states all Mental Health Response Team (MHRT) Officers have a duty to file a RMS Minor Aided Case 8 Report in addition to any other reports made when involved in any encounter with an individual suspected of being mentally ill. In their statements, Sergeant Sterbling and Officer Utecht confirmed they are both MHRT trained. BWC footage showed Mrs. Gaines advised both officers that Mr. Gaines had mental health issues; Officer Utecht responded that he had known for a long time that Mr. Gaines was mentally ill and agreed with Mrs. Gaines that he needed treatment. During the arrest, Mr. Gaines made comments in response to Mrs. Gaines’s assertion he needed a psychiatric evaluation; Sergeant Sterbling told Mr. Gaines, “We know you are mentally ill.” Despite their recorded belief that Mr. Gaines suffered from a mental illness, and their MHRT training and the duties that entail, neither officer filed a RMS Minor Aided Case 8 Report. Furthermore, the policy clarifies that MHRT Officers should also use non-confrontational verbal skills, empathy, and/or active listening to stabilize a person in crisis or when confronted with a situation where control is required to effect an arrest or to protect the public’s safety. During Mr. Gaines’s transport to the HCJC, BWC footage showed the officers did not employ these strategies (as detailed later). CCA finds that both Officers Sterbling and Utecht did not comply with CPD’s policy, procedure, and training.

#### **Allegation: Discourtesy**

CPD’s Manual of Rules and Regulations Section One – Failure of Good Behavior 1.06 states that members of CPD shall always be civil, orderly, and courteous in dealing with members of the public. Further, it states that they shall avoid using coarse, violent, or profane language. BWC footage showed Sergeant Sterbling engaged in inappropriate banter with Mr. Gaines and made unprofessional comments as detailed in the BWC transcription. Instead of de-escalating Mr. Gaines’s behavior, the conversation maintained and fostered his hostility towards the officers. CCA finds that Sergeant Sterbling did not comply with CPD’s policy, procedure, and training.

#### **Allegation: Lack of Service**

Sergeant Sterbling and Officer Utecht were dispatched to a domestic violence situation. Per the CAD Report, Mrs. Gaines reported her husband, Mr. Gaines, had a domestic violence warrant against him but indicated a new allegation when she added he “has been texting...very

threatening messages” and was inside her home; she added that he has a history of violence and was unsure of his state of mind. In addition, video evidence confirms that after Mr. Gaines was handcuffed and placed in the police cruiser, Mrs. Gaines and Officer Utecht discussed Mr. Gaines’s history of domestic violence against Mrs. Gaines.

CPD Procedure § 12.412 Domestic Violence states officers will respond without delay to reported incidents of domestic violence, “conduct a thorough investigation,” and assess whether there is probable cause to make an arrest for a domestic violence offense. Procedure § 12.412 also requires the responding officers to take the following steps, among others: (i) complete a Motion for Temporary Protection Order for domestic violence offenses; (ii) offer to have the victim complete a Form 311FV; (iii) conduct a lethality screening and consider calling DVERT; (iii) provide the victim with domestic violence resources, including the Ohio Attorney General’s “Your Rights and Responsibilities as a Crime Victim” booklet; and (iv) complete a 301 Case Report for domestic violence.

When Sergeant Sterbling and Officer Utecht arrived on scene, they subsequently located, arrested, and transported Mr. Gaines to HCJC; however, they did not address or investigate the new allegations of domestic violence. CCA did not receive or locate records related to a Motion for a Temporary Protection Order associated with the new allegations, Form 311VS, or Form 301 for that date. No domestic violence resources were provided to Mrs. Gaines. Furthermore, Mr. Gaines was not charged for any additional crimes. Due to the significant history of domestic violence perpetrated by Mr. Gaines against Mrs. Gaines, as evidenced through the Hamilton Clerk of Courts, this appears to have been a missed opportunity for an officer to provide resources to assist and possibly prevent further abuse. CCA finds that Officers Sterbling and Utecht did not comply with CPD’s policy, procedure, and training.

**Note:**

1. Sergeant Sterbling received an ESL for violating CPD’s Manual of Rules and Regulations regarding his improper conversation with Mr. Gaines.
2. This encounter occurred in January 2019. In January 2021, CPD issued a training bulletin which provided recommended responses for when individuals spit on officers, to include creating distance, verbal commands, repositioning the subject, and securing a spit hood/mask. The bulletin states that officers must determine whether the arrestee is actively resisting arrest as defined in CPD Procedure §12.545. If so, officers are permitted to use whatever force is reasonably necessary; however, if the individual’s only action is spitting, CPD procedure limits the amount of force permitted to address the conduct, stating, “Although a criminal offense, a subject who spits on an officer without engaging in any other actions/resistance is not considered a violent attack. Officers are prohibited from delivering physical strikes to a person who is solely spitting on them.” CPD also updated CPD Procedure §12.545 with that language.

## FINDINGS

### *Original Allegation*

Sergeant Zachary Sterbling

**Excessive Force** – The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the Officer were improper. **SUSTAINED**

*Collateral Allegations*

Sergeant Zachary Sterbling  
Officer Douglas Utecht

**Improper Procedure** – The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the Officer were improper. **SUSTAINED**

**Lack of Service** – The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the Officer were improper. **SUSTAINED**

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Sergeant Zachary Sterbling

**Discourtesy** – The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the Officer were improper. **SUSTAINED**



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Jessalyn Goodman, Investigator



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Gabriel Davis, Director

**PREVIOUS  
CONTACTS AND  
COMMENDATIONS**

**Sergeant Sterbling**

**Previous Contacts with CCA**

Sergeant Sterbling had six previous encounters with CCA in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
16033	Discharge of a Firearm Allegation (Fatal)	Exonerated
16101	Procedure Violation	Referred (Unfounded)
16101	Discourtesy	Referred (Exonerated)
16159	Discourtesy	Referred (Exonerated)
17088	Pointing of a Firearm	Exonerated
17112	Discourtesy	Referred (Exonerated)
18165	Harassment	Referred

**Previous Contacts with IIS**

CCA is unaware of any additional previous contact by Sergeant Sterbling with IIS.

**Commendations**

Sergeant Sterbling received five commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
01/23/2016	Civilian
03/21/2017	CPD
06/17/2017	CPD
06/17/2017	CPD
10/25/2018	CPD

**Officer Utecht**

**Previous Contacts with CCA**

Officer Utecht had two previous encounters with CCA in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
18076	Death in Custody	Unfounded
18076	Stop (Person)	Exonerated
18196	Lack of Service	Referred (Unfounded)

**Previous Contacts with IIS**

CCA is unaware of any additional previous contact by Officer Utecht with IIS.

**Commendations**

Officer Utecht received seven commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
01/23/2016	Civilian
03/21/2017	CPD
06/11/2017	Civilian
06/17/2017	CPD
06/17/2017	CPD
10/25/2018	CPD
10/06/2018	Other Law Enforcement